ISSN 0828-2277

Nineteenth Annual Report

TO THE LEGISLATIVE ASSEMBLY

Province of Alberta

Office of the Ombudsman

FOR THE PERIOD JANUARY 1, 1985 TO DECEMBER 31, 1985

LEGISLATIVE ASSEMBLY
PROVINCE OF ALBERTA
Office of the Ombudsman

April 8, 1986

The Honourable Gerard Amerongen, Q.C.,
Speaker of the Legislative Assembly,
Legislature Building,
EDMONTON, Alberta
T5K 2B6

Mr. Speaker,

I have the honour to submit, for the information of the Legislative Assembly, the Annual Report of the Office of the Ombudsman for the year ending December 31, 1985.

Respectfully submitted,

Brian Sawyer,
Ombudsman

1630 PHIPPS-McKINNON BUILDING, 10020 101 A AVENUE, EDMONTON, ALBERTA T5J 3G2 · (403) 427-2756

1060 McFARLANE TOWER, 700 4th AVENUE S.W., CALGARY, ALBERTA T2P 3J4 · (403) 297-6185

From the Ombudsman Act
Chapter 0-7 RSA 1980

2(1) There shall be appointed, as an officer of the Legislature, a commissioner for investigations to be called the Ombudsman.

27(1) The Ombudsman shall in each year make a report to the Legislature on the exercise of his functions under this Act.

TABLE OF CONTENTS

Introductory Remarks 1

Geographical Origin of Complaints 4

Complaints Received and Investigations Concluded 5

Case Summaries and Departmental Statistics 7

Advanced Education 9
Agriculture 11
- Agricultural Development Corporation
- Hail and Crop Insurance Corporation

Attorney General 12
- Crimes Compensation Board
- Public Trustee

Consumer and Corporate Affairs 13
Culture 13
Education 14
- Teachers' Retirement Fund

Energy and Natural Resources 15
- Public Lands Division

Energy Resources Conservation Board 17
Environment 18
Hospitals and Medical Care 19
- Alberta Mental Hospitals
- Health Care Insurance Division

Housing 20
- Mortgage Interest Relief
- Mortgage and Housing Corporation

Labour 21
- Employment Standards Branch
- Human Rights Commission

Manpower 22
Municipal Affairs 23
- Assessment Appeal Board

Personnel Administration Office 24
Public Safety Services 24
Public Works, Supply and Services 25
Recreation and Parks 26
Social Services and Community Health 26
- Alcoholism and Drug Abuse Commission

Solicitor General 28
- Correctional Services Division
- Liquor Control Board
- Motor Vehicles Division

Tourism and Small Business 31
- Small Business and Farm Interest Shielding Branch

Transportation 31
Treasury 33
- Treasury Branches
- Public Service Pension Administration

Utilities and Communications 34
- Alberta Government Telephones

Workers' Health, Safety and Compensation 35
- Workers' Compensation Board

Excerpts from the Ombudsman Act 38

INTRODUCTORY REMARKS

While I am not entirely certain that it is a good thing, my first full year as Ombudsman was notable for an absence of controversy. No issues arose in 1985 that, from my perspective, could be described as headline material. I did not find it necessary to begin any inquiries on my own initiative. While my authority to investigate was questioned in two cases, there were no actual challenges to my jurisdiction. Although it might be useful to make some housekeeping changes to the Ombudsman Act, the statute seems to provide adequate direction as to the intent and wishes of the Legislature about the scope of my responsibility and authority.

The relative calm of the past twelve months may in part reflect the fact that the office has been in place for nineteen years, longer than any other Ombudsman's office in North America. There has been time for an effective working relationship to develop between my office and the bureaucracy. As I wrote a year ago, I believe that the interests of the public are best served when a cooperative rather than an adversarial approach characterizes the relationship between the Ombudsman and the public service. Even so, I am sure there are occasions when a public servant wonders why I take on a case that, in his or her judgement, does not have merit.

The answer to that is plain. The public service wields immense power in its dealings with citizens — both the visible power of the law and all the intangible powers that derive from its relationship with citizens who have no choice but to deal with government on a daily basis. In a sense, the bureaucracy is a monopoly that harbours all the potential for abuse inherent in any monopoly. Government licenses our essential activities. It oversees the institutions that teach us when we are young and keep us in health as we grow older. It disburses the money we need to survive when we are destitute. It may even expropriate our land when the public interest requires it. And from the day we are born to the day we die it demands of us a multitude of detailed forms and applications.

To carry out its enormous task in a way that is both consistent and fair, the public service has had to develop a maze of regulations, rules and guidelines. The result for the average citizen is rather like an elaborate board game which he is conscripted to play and in which, each time he lands on a new square, new rules are read out to him. When he suspects the bureaucracy of playing unfairly, he may believe there is little he can do about it. Perhaps he is mystified by the bureaucratic process; perhaps he feels intimidated by officials; or perhaps he fears that if he complains, the power of "the government" may be used against him.

What it comes down to is that the public official is in control in his dealings with the citizenry. Yves Labonté, the Public Protector of Quebec, addressed the issue with his customary flair in his 1982-83 annual report. He has been quoted by others, but his comments bear repeating:

> The Protector must receive with sympathy the complaints lodged with him. It is a must because the citizen, at grips with the State, happens to be in an extremely unfavourable position. He is like a poor beggar facing an official who knows very well the various doors of government and holds all the keys; the citizen who feels he has been wronged has few chances of winning this unequal battle. That is why his official Protector must greet with sympathy his request for help; the Protector must agree to initiate an investigation even though he may not be thoroughly convinced that the complainant is within his rights, provided he has some reason to believe the citizen has been wronged.

That is why, whenever there is a possibility that an administrative error has occurred, I investigate. If lack of fairness has in any way intruded into the actions (or inactions) of the bureaucracy, I am bound to point it out and to recommend whatever remedy protects the

interests of an aggrieved citizen and preserves the integrity of the administrative process.

Fairness is the operative word that guides any ombudsman's approach. If a citizen asks "why?" and the bureaucracy replies "because the law (or regulation) says so", such an answer merely provides a beginning point for an ombudsman's inquiries. When he determines that the letter of the law and natural justice do not coincide, it is the latter rather than the former that bears most directly upon his recommendations at the conclusion of an investigation. Natural justice asks questions concerning intangibles that may not be spelled out in the law. It seeks the answers to questions like: Was there ill treatment of a citizen through rudeness, poor communication, or unreasonable delay? Does it appear that a decision was influenced by bias? Was it based on full and relevant information? And, ultimately, is the regulation unfair or was the decision just plain wrong?

The premise underlying the concept of the ombudsman is that the public service exists to administer the laws and regulations of the legislative assembly, and to do so in a manner that opens rather than obstructs a citizen's path in his dealings with government. Such a statement may seem self-evident, but the importance of emphasizing it is illustrated by the case summaries that make up the bulk of this report. On the whole, I am impressed that the Alberta public service performs its function in a fair and efficient manner. However, a pattern that becomes apparent on reading the summaries is that complaints to my office are often substantiated simply because someone has forgotten, or ignored, the truism that the primary task of the public service is to serve the public. More particularly, two common failings appear to surface in this year's summaries: inadequate communication by public servants both with the public and with one another, and a stubborn adherence to regulations when flexibility and imagination are called for.

The language in which the Ombudsman Act is couched assumes that if, following an investigation, I conclude that an administrative injustice has occurred, I will make a recommendation to rectify the error. This implies a degree of formality that in practice is seldom necessary. It has been my experience to date that most issues are resolved as an investigation unfolds, and they are resolved by a department agreeing to change something before a formal recommendation is made. I think this speaks well for the public service, which, like me, tries to ensure that citizens are dealt with fairly and equitably.

In practice, change is frequently made as a result of a suggestion that something be rethought. In fact, I have made a conscious decision to move towards an informal resolution of problems whenever practical. For example, in dealing with the complaints of inmates of provincial penal institutions I have arranged with the Deputy Solicitor General that, where possible, the investigation of a complaint at the institutional level need not generate reams of correspondence at the official level.

Overall, the number of complaints received and investigated in 1985 continued to reflect the downward trend that began in 1983. The number of oral complaints remained roughly the same as in 1984, but written complaints were reduced by 17 percent. Of particular note is the fact that complaints against the Department of Social Services and Community Health were down by 36 percent. This decrease was reflected across the system, with no one type of service or service delivery region standing out in sharp contrast to the rest. While it would be interesting to attempt to pin down the reason for the change, such speculation is best left to the department itself.

Partly because of reduced workload, and partly because of the introduction of a new and efficient word processing system, it has been possible to leave vacant, at least for the time being, two secretarial positions. I am presently filling only one of the two solicitor positions for which I have authorization. Present staffing consists of:

In Edmonton	In Calgary
The Ombudsman	1 Manager/
The Executive Director	Investigator
An Executive Assistant	1 support staff
A Solicitor	
A Complaints Analyst/Investigator	
4 Investigators	
4 support staff	

I have also begun to utilize part-time investigators as the caseload ebbs and flows.

The authorized budget for the fiscal year ended March 31, 1986, was $718,885 for staff and $166,500 for supplies and services, for a total of $885,385. This represents an increase of 2.5 percent over the 1984-85 figure.

During the year under review we published a new and more extensive brochure dealing in practical terms with how the office works and how citizens can have access to the process. Two printings of 20,000 have been made and have been given extensive distribution to government offices and other localities throughout the province that are visited frequently by the public.

Additionally, a series of columns that summarize typical investigations and describe the role of the Ombudsman was distributed to members of the Alberta Weekly Newspapers Association. A number of letters of complaint have come from people who found out about the office on reading the columns.

I gave many informal talks and several formal speeches during the year. On each occasion I found audiences to be interested in the function of the office but relatively unaware of the kinds of cases that come to my attention.

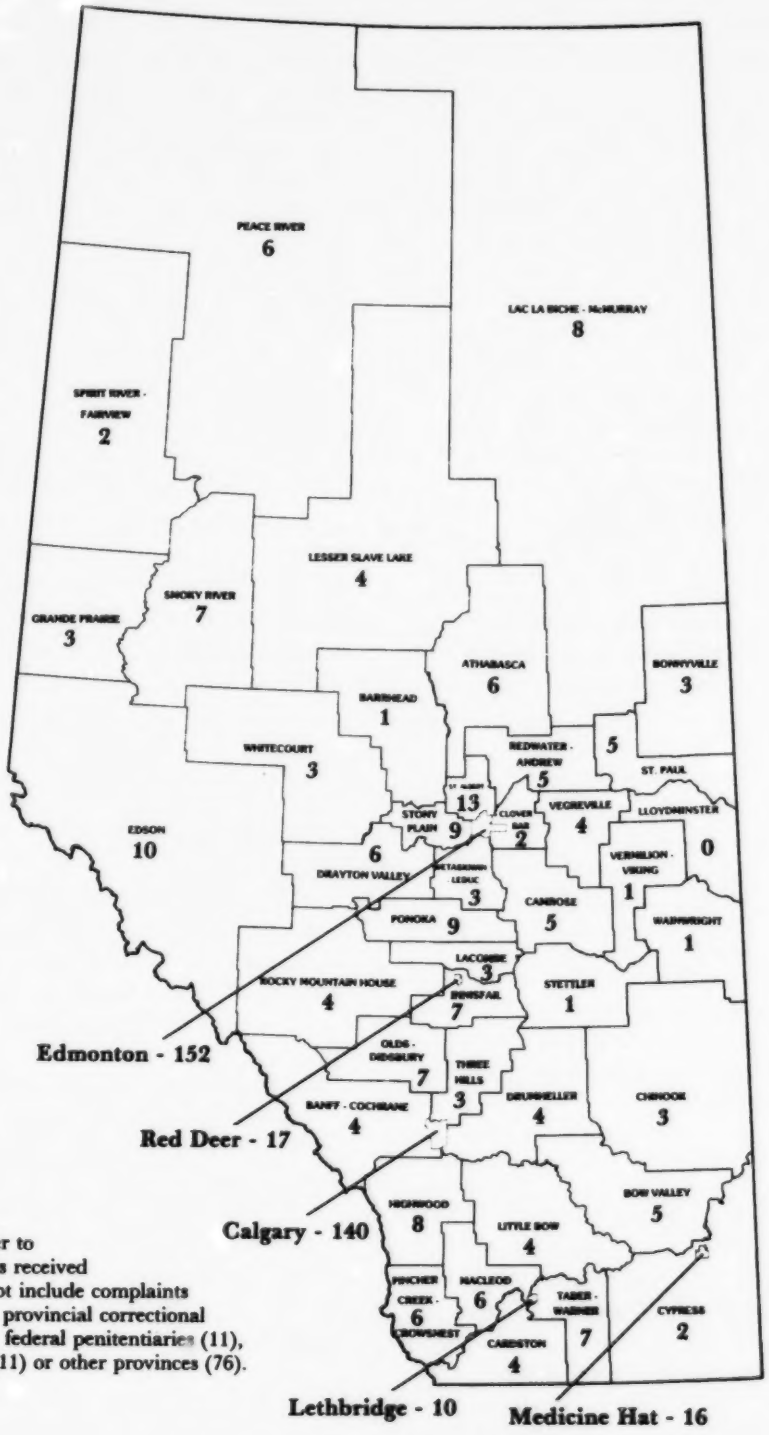
During the coming year I intend to increase awareness of the office among rural Albertans by visiting communities throughout the province.

I spent considerable time during July and August attempting to find a chairman to arbitrate the contract dispute between Edmonton Telephones and Alberta Government Telephones. Although my original suggestions were not acceptable to both parties, I believe the process motivated them sufficiently to the point where they ultimately agreed on a chairman.

In addition to travelling to the annual conference of Canadian Ombudsmen in Quebec City in June, I attended a directors' meeting of the International Ombudsman Institute that was held in Sydney, Australia, in April.

A visit by Chief Justice (retired) Sardar Muhammad Iqbal, the Ombudsman for Pakistan, served as an encouraging reminder of the rapidly widening acceptance of the ombudsman institution among governments throughout the world.

GEOGRAPHICAL ORIGIN OF COMPLAINTS



These figures refer to written complaints received in 1985 and do not include complaints that originated in provincial correctional institutions (190), federal penitentiaries (11), mental hospitals (11) or other provinces (76).

COMPLAINTS RECEIVED AND INVESTIGATIONS CONCLUDED

Complaints received

Of the 817 written complaints received by our office during 1985, 201 were outside our jurisdiction either because they were not against the Alberta government or because they dealt with provincial government agencies (primarily hospitals and educational institutions) specifically excluded from our jurisdiction by section 1(a) of the Ombudsman Act.

We declined to investigate a further 282 written complaints, almost without exception because other available avenues of appeal had not been explored before the Ombudsman's assistance was sought. Information was provided about appeal processes, and complainants were invited to resubmit their complaints to us should they consider the results improper or unfair.

The remaining 334 complaints were investigated.

Written Complaints Received

Year	*Written complaints*	*Within jurisdiction*	*Accepted for investigation*
1985	817	616	333
1984	986	752	411
1983	1,025	832	428
1982	981	732	447
1981	834	634	300
1980	783	565	321

More than half of the non-jurisdictional complaints received in 1985 concerned private matters, and the great majority of these had to do with consumer issues or the actions of lawyers. People with consumer complaints (about stores, manufacturers, insurance companies and banks, for example) were generally referred by us to the Department of Consumer and Corporate Affairs, whose regional offices throughout the province investigate consumer complaints. Those who wished to complain about lawyers were referred to the Law Society of Alberta, which is charged with investigating allegations about the professional behaviour of its members and taking disciplinary action when appropriate.

Approximately one-quarter of our non-jurisdictional complaints were directed against other governments. In each case we took the details of a complaint and attempted to provide as specific information as possible about ways of having it resolved. In addition, people with complaints against municipalities were often referred to the civic complaints bureaus that have been set up by major cities or, in the case of smaller communities, to their alderman or other local elected representative. Those with complaints against other provinces were given the addresses of their governments' Ombudsmen. Those with grievances concerning departments of the federal government were given the numbers of the Canada Service Bureau or of their Members of Parliament.

People objecting to court decisions were advised about appeals to higher courts, and those who wished to complain about the actions of Crown counsel were generally advised to express their concern to the Department of the Attorney General. Those whose complaints were directed against those hospitals, colleges and universities that are outside our jurisdiction were provided with information about appropriate avenues of appeal, such as the Health Facilities Review Committee in the case of hospitals and boards of governors in the case of academic institutions.

In addition, we received written requests for information and assistance regarding a variety of matters to which we responded as thoroughly as possible.

Non-jurisdictional Written Complaints

Private matters	103
Municipalities	27
Federal and other provincial governments	24
Courts	12
Hospitals, colleges, universities	7
Requests for assistance/information	28
Total	201

In addition to written complaints, approximately 1,500 oral complaints were fielded. As the Ombudsman Act stipulates that a formal investigation by the Ombudsman may be initiated only upon receipt of a complaint in writing, we advised each caller accordingly and, when a complaint appeared to be within our jurisdiction, suggested that a letter be forwarded to us. Assistance was provided to callers through advice about appeal procedures and through referrals to other agencies on non-jurisdictional matters. In addition, we made telephone inquiries on behalf of many callers in order to assist in the resolution of sundry problems.

Investigations concluded

The table below indicates the various ways in which files were concluded in 1985. One hundred and fifteen complaints from earlier years were carried over into 1985 in the course of investigation, and 88 complaints were carried over into 1986.

Disposition of Files Concluded During 1985

	Assistance provided	*No assistance possible*	*Total*	*Percent*
Resolved informally	27	20	47	13%
Supported	58	6	64	18%
Not supported	12	195	207	57%
Discontinued	6	33	39	11%
Unresolved			3	1%
Total			360	100%

Complaints that are *resolved informally* are those where it is apparent either that immediate action is required if the complainant is to be helped or where the substance of a complaint is so simple that it can be sorted out by a telephone call or two. This is true especially of complaints involving the Correctional Services Division and the Department of Social Services and Community Health. Formal investigations involve a more lengthy process that begins with a letter to the deputy minister of the relevant department, outlining the complaint and soliciting a response to the allegations that have been made.

Supported complaints are those that, after complete investigation, are found to be justified in whole or part, following which the Ombudsman recommends an appropriate remedy.

When a full investigation reveals a complaint to be without justification, it is designated as *not supported,* and reasons for the Ombudsman's conclusion are provided both to the complainant and to the department.

Discontinued files are closed for a variety of reasons. For example, a complainant's grievance may be resolved before our investigation is concluded, we may be asked by a complainant to abandon our investigation, or it may be determined during the course of an investigation that as yet unexplored statutory rights of appeal or judicial remedies are available to a complainant.

Unresolved complaints are those in which no satisfactory resolution is reached either because it proves impossible to determine the merits of a complaint or because an appropriate remedy cannot be implemented.

* * *

Information about the number of complaints made about individual departments is provided with the case summaries in the following section of this report. Complaints against three governmental bodies — the Department of Social Services, the Correctional Services Division and the Workers' Compensation Board — comprised almost half of the total number of complaints brought to our attention. There was an overall reduction of 17 percent in complaints received between 1984 and 1985.

Distribution of Written Complaints Received

	1984	*1985*	*change*
Correctional Services	188	187	0%
Workers' Compensation	143	121	-15%
Social Services	109	70	-36%
All others	546	439	-20%
Total	986	817	-17%

CASE SUMMARIES AND DEPARTMENTAL STATISTICS

The purpose of the following summaries of individual investigations carried out in 1985 is simply to illustrate the nature and variety of complaints received during the year. Although they are grouped by department, they are chosen to reflect typical matters of dispute between citizens and the bureaucracy that may generally arise in any department of government.

The investigative role of the Ombudsman that is reflected in the case summaries represents only a part of the service that an office such as this provides to the public. All formal investigations follow from written letters of complaint, but far greater in number are the telephone calls and visits we receive, many of which are not complaints as such but requests for assistance in resolving a variety of problems. A person who contacts this office very often is not "blaming" anyone. He or she has a problem, has arrived at an impasse, and is reaching out for a solution.

It is misleading to view the Ombudsman solely as an investigator of complaints, for much of the work of his office entails simply providing information to people who call and acting as a go-between who sorts out misunderstandings regardless of their origin. Because the staff at our office are knowledgeable of departmental procedures and familiar with the personnel who operate the various branches of government, it is relatively easy for them to obtain information that might take the average citizen numerous telephone calls, not to mention considerable time and frustration, to acquire.

A typical caller was the social assistance recipient whose file had recently been transferred from one regional office to another and who was desperately awaiting her social assistance cheque, which had been inexplicably delayed. The mother of an eight-month-old baby, she had no money with which to purchase food or diapers and had been forced to borrow milk for the baby from a neighbour. She had twice called the emergency social worker at the office, and each time had been told the cheque was in the mail. The emergency worker had agreed to speak to the supervisor to see if anything could be done, but after this was done the mother was told she would simply have to wait for her cheque to arrive in the mail. After hearing her story, we decided to call the district office manager and stress the urgency of her situation. He agreed to call the mother, and, having done so, provided her with a voucher so that she could obtain the essentials that were immediately needed by her.

Many of the letters that come into the office are also dealt with in an expeditious manner without embarking on a formal investigation, especially when the substance of the problem appears relatively simple or when time is of the essence.

Typical of such an informal investigation was the case of a farming couple who were anxious to straighten out a mixed-up lease. They lived in a remote northern area, and it was awkward for them to make arrangements to come to the Land Titles Office in Edmonton to attempt to sort out the mystery.

Case summary 1

No way to draft a lease

A couple who owned a quarter section were having difficulty collecting rent from a sawmill operator with a lease on their land. Finally they took him to court, but the judge said that the wording of the lease was so peculiar that he could make neither head nor tail of it, and he declined to make a judgement on the lessee's obligations. The couple was under the impression that the lease was on only a few acres, but the lessee maintained it was for the whole quarter section. After calling the Land Titles Office, the couple were left with the impression that two leases with identical numbers were registered, one of them being for six acres and the other for the entire quarter section.

Dismayed at the possibility of massive legal expenses to get things sorted out, they approached us for assistance. "How could this possibly happen, and how do we go about rectifying the error?" they wrote.

We met with the Administrative Deputy Registrar of Land Titles, who searched the title for us and went over the documents with us. It soon became apparent why the lease was incomprehensible. The documents revealed a host of irregularities.

In the first place, the lawyer who had drawn up the lease had omitted crucial words that would have indicated its exact location. It was described as being in the southwest corner, "lying immediately to the parcel of land described as Lot A" [*sic*]. Secondly, an attached sketch showed Lot A lying in the northwest corner, thus contradicting the written lease. Thirdly, the Land Titles clerk who had registered the title on the property when the couple purchased it had apparently been so confused by the description that he had simply described the land as being subject to a lease, without giving particulars, in consequence of which it could be read as a charge on the whole property. Finally, local planning authority approval, which is required on all leases smaller than a quarter section, had never been sought or received. In short, the lease was flawed by so many irregularities and contradictions that it would have to be redrafted and resubmitted to have any practical validity.

We described to the couple the nature of the problem and explained that a court order would be necessary to make direction for the correction of the lease and that they would be able by statute to apply for compensation for legal costs expended to correct an improper registration by the Land Titles Office. In addition we provided them with the address of the Law Society, as they wanted to make a complaint against the lawyer who had acted for them when they purchased the property and who apparently had acted negligently in failing to conduct a proper title search.

* * *

The normal investigative process, which involves correspondence with departments and consequent delays, is sometimes bypassed as well when a complaint requires an immediate decision for a remedy to have any meaning. Such was the case when a woman was concerned that without immediate assistance she would lose the opportunity to avail herself of important surgery.

Case summary 2

An opportunity not to be missed

A young woman had been receiving free orthodontic treatment as the dependent child of a recipient of social allowance benefits. The treatment was to culminate in major surgery to treat a jaw malformation that interfered with both eating and speech.

Very shortly after her eighteenth birthday she learned that because of a cancellation a hospital bed had become available and a date for surgery had been established. When she called the Department of Social Services and Community Health to notify it of the arrangement, she was told that she would be responsible for the costs of the surgery because (1) as an 18-year-old she was no longer a dependent of her mother and (2) as a student receiving a maintenance grant from the Students Finance Board she had made herself unemployable and was ineligible for social assistance benefits.

The woman had no money to pay for the surgery, and she was concerned that if she put off the operation until some future time her orthodontic treatment might be delayed indefinitely. She appealed unsuccessfully to the Citizens Appeal Committee, who suggested she seek help from the Alberta Dental Association. The ADA indicated that its policy is not to provide financial assistance to adults but suggested that most of the surgical bill could be covered by Alberta Health Care. This possibility, unfortunately, was dismissed by the woman's surgeon, who advised her that his billing for costs not covered by Health Care would run to $1,500. As a last resort the woman approached our office to see if anything could be done.

We contacted the Emergency Financial Assistance Committee of Alberta Health Care

but were told that it was in no position to assist the woman. We spoke to officials in the Department of Social Services and Community Health and learned that departmental policy specifies that when child dependents of social assistance recipients require extensive orthodontic treatment, the Alberta Dental Association will draft a plan indicating stages and costs of treatment, following which a departmental committee reviews the plan and allots funds for it. At the age of 18 a child forfeits entitlement to normal dental coverage but retains the right to complete orthodontic work that has already commenced until such time as the allotted funds are expended. While funds remained in the complainant's account for completion of her orthodontic work, nothing had been set aside for oral surgery because no estimate had been available as to its cost.

In response to our inquiries, the department agreed to review the complainant's treatment plan, and, having done so, decided to allot the necessary funds now that the actual costs of the surgery were known. The reversal of the department's decision was timely and a happy turn of events for the complainant, who expressed her appreciation in writing as her jaw was by this time wired shut following a successful operation.

* * *

The great majority of letters of complaint that are accepted for investigation lead to formal inquiries that involve correspondence with departments and interviews with those persons who can provide us with relevant information about the matter complained of. The following case summaries describe some of the complaints that came to our attention during 1985 and proceeded to investigation. Accompanying statistics are provided for all departments except the Department of Economic and Development and the Department of Federal and Intergovernmental Affairs, against which no complaints were made.

The summaries have not been chosen to illustrate noticeable patterns among complaints. Nevertheless, certain common threads do become apparent. Complaints that are supported by our office frequently stem from situations where public servants appear to lose sight of their primary function: to actively facilitate citizens' dealings with government not only by prompt action and clear communication but also by taking care not to passively obstruct citizens through a blind adherence to regulations when circumstances call for flexibility and compromise. The failure to fulfil these responsibilities on some occasions is illustrated by case summaries such as 3, 5 and 12 (unreasonable delay); 8, 9, 11, 15 and 28 (impaired communication); and 3, 4, 7, 13, 19 and 22 (inflexible application of regulations).

DEPARTMENT OF ADVANCED EDUCATION

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints	4	1	3	2	1	0	11

Case summary 3

When a government regulation is breached, there is all too often an automatic assumption by department employees that the citizen is in the wrong. The complainant in the following case thought he had taken every reasonable precaution to ensure that a deadline was met. When it was missed through no apparent fault of his own, he was not even informed that his application had been routinely shuffled into limbo. If a department has already been alerted that its own errors are adversely affecting a citizen's interests, it must be doubly careful to ensure that he receives fair treatment.

Missed deadline, major headache

A medical student complained to us about the handling of his student loan file. He

explained that after his graduation from university in Ontario he had consolidated his Alberta loans at his bank. At the same time he completed an application for remission of the grant portion of the total. The bank officer agreed to complete her portion of the application and forward it to the Alberta Students Finance Board.

Three months later, in December, the graduate telephoned the Students Finance Board and was assured that his file was complete and that he would receive his cheque in six to eight months. In February he was notified by the Board that remission had been approved, but it was for $2,500 less than he had understood he was to receive. He wrote to the Board to ask for an explanation.

The financial aid adviser who replied told him that his file was incomplete as the Board had not received the remission application that he had asked the bank in Alberta to forward six months earlier. She said she was enclosing a replacement application form for him to return to the Board. As there was no enclosure in the envelope, he telephoned the financial aid adviser, and she sent him the application with her apologies. This arrived three weeks after her first letter had been sent and only four days before the deadline for submission of the application. He filled it out again, forwarded it to his bank for completion, and asked the bank to send it to the Board by registered mail.

Six weeks later, having had no further correspondence from the Board, the graduate telephoned again and was told the application was still not on file. He called the bank and learned that they had forwarded it by registered mail as requested. The bank called the Students Finance Board and was told that if the student's application had arrived after the April 1 deadline, it would have been set aside indefinitely without being processed, pending a new budget and policy revisions.

The graduate complained to us that in view of the fact that it was the apparent negligence on the part of the Board that had caused the deadline to be missed, an exception should have been made in his case. He said he felt as if he was being punished for a breach of regulations that was simply a result of the repeated mistakes of others.

Our investigation confirmed his allegation that he had taken all reasonable steps to meet the deadline. The Students Finance Board agreed that its officials had erred, the deadline was waived, and the complainant received his money.

DEPARTMENT OF AGRICULTURE

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Agricultural Development Corporation	3	0	0	3	0	0	6
Hail and Crop Insurance Corporation	0	0	0	1	0	0	1
Other Agriculture	2	0	2	0	0	0	4
Total	**5**	**0**	**2**	**4**	**0**	**0**	**11**

Case summary 4

Governmental bodies that exercise discretionary powers must be careful to maintain a flexible approach in the application of the laws they administer. One of the most valuable roles of the Ombudsman is that of the objective arbitrator who can suggest reasonable compromises when a citizen is faced with a bureaucracy that stands firmly behind the letter of the law.

A bailiff's nightmare

A bankrupt farmer's application for insurance coverage by the Hail and Crop Insurance Corporation was refused because he had not paid an earlier debt owing to the corporation. The $10 application fee was not returned to him. In the fall, after his crop had failed, he complained to us that the corporation had wrongfully discriminated against him by rejecting his application for insurance and that it certainly had no right to refuse him and then keep his application fee.

In defence of its position, the insurance corporation stated its policy that applications are not to be accepted from anyone who has not paid a previous account, citing as its authority section 38 of the Hail and Crop Insurance Act, which states that "the corporation is not bound to accept any application for insurance".

Not only had the complainant proven to be a poor risk in the past, but when the corporation had sought to collect a debt from him by way of a sheriff's seizure, the attempt had proven singularly unsuccessful due to an altercation between the bailiff and the complainant's wife. The bailiff reported to the sheriff that when he arrived at the complainant's yard with a tow truck and communicated his intent to the householder, she responded by attacking him with a broom handle and viciously beating him on the ribs and stomach even after he had sought refuge in his car. "In view of the recent circumstances," he added, "I would appreciate your sending another bailiff to work this file." The corporation expressed concern that employees of its agents should be subject to such untoward treatment.

We suggested to the corporation that it had erred in telling the complainant that his application was rejected due to an outstanding debt. As the farmer had declared bankruptcy before making his application, all debts against him had ceased to exist in law. Nevertheless, it appeared reasonable that the corporation should seek to protect itself against likely risks. In the result, a compromise was arranged whereby the corporation agreed that it would be prepared to negotiate coverage for the complainant in future on the understanding that its premiums be paid in cash.

It was unfortunate for the complainant that he had not brought the matter to our attention before the growing season. The corporation admitted that it had acted wrongly in failing to return the complainant's $10 application fee, as required by statute. It agreed to return this money, but refused to consider providing retroactive coverage to the complainant for the year in which his crop had failed.

DEPARTMENT OF THE ATTORNEY GENERAL

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Crimes Compensation Board	1	0	1	2	0	0	4
Public Trustee	5	0	1	3	0	0	9
Other Attorney General	14	1	4	6	0	0	25
Total	**20**	**1**	**6**	**11**	**0**	**0**	**38**

Case summary 5

Unreasonable delay by public officials is one of the most frequent causes of complaint to the Ombudsman. When it results not only in frustration but also in considerable unnecessary expense to a citizen, it is all the more important that efforts be made to encourage the expeditious handling of administrative tasks.

Sheriff's delay expensive to creditor

Company A sued Company B after a default on a debt of several thousand dollars, as a result of which a garnishee summons was issued by the court against Company B. The money was to be paid into court and distributed by the sheriff's office.

Three weeks after the sheriff's office received the money, Company B declared bankruptcy. As the sheriff had not yet forwarded the funds to Company A, he was required by legislation to return the funds to the bankruptcy trustee. Company A complained to us that the unreasonable delay by the sheriff's office resulted in the loss of its money.

The Department of the Attorney General questioned whether it was appropriate for us to investigate in light of section 24(2)(a) of the Ombudsman Act, which provides that the Ombudsman may refuse to undertake an investigation if a complainant has known of the action complained of for over twelve months. Company A explained that it waited so long to complain because it had mistakenly believed that its interests would be considered by the Ombudsman during an earlier investigation of a complaint by another creditor arising from the same set of circumstances. It appeared to us that Company A had acted in good faith; consequently a decision was made to investigate its complaint.

Our investigation showed that the clerk of the court, with whom the money had been originally deposited and whose responsibility it was to transfer the money to the sheriff, had delayed forwarding the amount to the sheriff beyond the time limitation set by statute, despite an inquiry from the complainant's solicitor expressing the company's concern about the status of the funds. The sheriff, on receiving the money, had compounded the delay by retaining the funds more than the two weeks permitted by statute.

Had the statutory regulations been observed, the complainant company would have received its money in advance of the bankruptcy proceedings. We proposed that the complainant company be compensated for the amount it should have received. Initially the government insurer refused to accept the proposal, so the matter was referred by the department to the Attorney General, who agreed to honour the payment.

DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints	2	0	0	2	0	0	4

DEPARTMENT OF CULTURE

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints	1	0	0	1	0	0	2

Case summary 6

An historical house on the prairie

A development company purchased four adjacent lots with a view to erecting an apartment building. On one of the lots was an interesting but dilapidated old house that the company intended to demolish in the process of preparing the construction site. An architect was hired, building permits were obtained, and a construction contract was signed.

When a local historical society learned of the company's plans, its members protested to the Department of Culture that the house was a unique historical resource that ought to be saved. Among other aspects of its interesting history was the likelihood that the design for the provincial emblem had been conceived and painted by an artist looking out of the upper windows of the house to the wheatfields and mountains to the west.

Much to the company's chagrin, the department quickly designated the house a provincial historical resource under the provisions of the Alberta Historical Resources Act and caused a stop work order to be issued. The company shelved its plans for the site and asked the government to purchase it at a fair price having regard for its losses on the project. It detailed $80,000 in non-recoverable expenses and maintained as well that as the apartment building had been presold, considerable anticipated gains had been forfeited because of the department's action.

The department replied that it had no intention of acquiring the house and did not consider compensation to be justified. The department's position was that the company was not prevented from developing the site in a manner that would preserve the house, and it suggested that the company meet with the Historic Sites Service to discuss appropriate means of doing so.

The company complained to the Ombudsman that the department's response was unreasonable, unjust, oppressive and discriminatory. It maintained that the government's action was tantamount to expropriation and that under such circumstances compensation was appropriate.

The department denied that the designation of the site was in any way comparable to expropriation. It contended that it was never its intention to prevent the development of this or any other historical resource; rather, it encouraged innovation and design experimentation in the adaptive recycling and reuse of such resources so that they could contribute not only to cultural understanding but also to the economic health of communities. It described the purpose of the Historical

Resources Act as being to prevent the unnecessary destruction of Alberta history and to encourage the design and development community to deal respectfully with the past. It maintained that the company could preserve the historic nature of the site while developing the remainder of the property along profitable lines.

The company was not interested. It wanted to get out and get its money.

It became apparent that the department's reluctance to compensate the complainant company had been bolstered by the assurances of members of the local historical society that they would acquire a site to exchange for the property in question or, alternatively, purchase it themselves. However, neither of these proposals had come to pass.

The Ombudsman put it to the department that the company had suffered a loss through no fault of its own and recommended that the department undertake to negotiate a settlement. The company was adamant that it wanted compensation not only for out-of-pocket expenses but also for anticipated gains, and the department's position was hardened by the advice of the Department of the Attorney General that it had no duty to compensate. In the meantime the economy went into a downturn, further discouraging whatever interest the development company might have retained in proceeding with its project under any circumstances.

When the negotiations reached what appeared to be an impasse, the Ombudsman suggested to the department that it make an offer to purchase that would at least enable the company to recoup its original outlay. The department responded with an offer that it said approximated a fair market value under current conditions. The company declined the offer, arguing that the property was worth 50 percent more.

The Ombudsman advised the complainant that as the decision to make the purchase offer represented a considerable relaxation of the department's position, and as it was unlikely that the minister could be persuaded to move any further, he was closing his file and would leave subsequent negotiations to be carried out between the complainant and the department.

From the beginning to end, the Ombudsman's involvement extended over the course of five years. The action that gave rise to the company's complaint would almost certainly not occur today, as departmental policy now requires that thorough assessments of potential historical resources be made before they can be designated as such.

DEPARTMENT OF EDUCATION

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Teachers' Retirement Fund	1	0	0	0	0	0	1
Other Education	0	1	0	1	0	0	2
Total	**1**	**1**	**0**	**1**	**0**	**0**	**3**

DEPARTMENT OF ENERGY AND NATURAL RESOURCES

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Public Lands Division	0	0	0	1	0	0	1
Other Energy and Natural Resources	4	0	1	9	0	0	14
Total	**4**	**0**	**1**	**10**	**0**	**0**	**15**

Case summary 7

There may be good reason for refusing to make an exception to departmental regulations even when a rigid application may seem silly and narrow-minded at first glance. The point is well illustrated by the case of the owl and the teacher's aide.

The owl and the teacher's aide

One morning a boy on his way to school came across a dead owl in an alleyway. He brought it to his teacher, who examined it and found it to be completely undamaged. The most likely explanation was that it had flown into a power line.

The teacher's aide, an avid naturalist, thought it would be a beautiful specimen to have mounted, so she took the owl to the Fish and Wildlife Division of the Department of Energy and Natural Resources and applied for a permit to keep the bird. Such an application is required by the Wildlife Act, which states that all wildlife (i.e., any non-domestic vertebrate animal except fish) belongs to the Crown and that no one can possess it unless expressly permitted to do so by the government.

Much to the woman's dismay, a wildlife officer wrote back and told her that her application had been refused because "the legislation which authorizes the issue of such permits provides that permits may be issued only to persons who have found dead wildlife, and no provision is made for the wildlife to pass from one person to another."

The teacher's aide thought this was plumb silly. She wrote to the assistant deputy minister of the department and told him so. She said she totally agreed that wildlife should be protected, but considering that tests done by the department showed that neither she nor the boy had been implicated in the death of the owl, surely it was reasonable to make an exception to the rule in her case. "Coming into possession of wildlife in this innocent manner is a very rare opportunity for us," she explained.

The assistant deputy minister remained unconvinced. He refused her appeal, and she sought our intervention. Concerned that the department might be interpreting its regulations in an unnecessarily rigid manner, we wrote to the deputy minister to see if there was any room for manoeuvre. He said that the wording of the legislation allowed no room for ministerial discretion, but there was a possibility of an amendment being brought in at a later date that might allow some flexibility in cases such as the one in question.

He added that there was good reason for the department's reluctance to create leeway in the granting of permits for the possession of wildlife. Increasingly it seemed to be the case that certain "hunters", on finding dead creatures such as birds of prey in the woods or by the roadside, would apply for a permit of possession and then, having obtained it, would simply dispose of the animal and go out and shoot another of the same protected species, reasoning that if caught they could simply flash a permit.

Unfortunate as it may seem, the "once burned, twice shy" principle applies to government as much as to anyone else: the greater the abuse of existing legislation, the greater the inclination to tighten restrictions.

Case summary 8

When two or more departments are frequently involved in joint dealings involving private interests, it is especially important that emphasis be placed on clear interdepartmental communication to protect a citizen from being caught in a process where the right hand does not know what the left hand is doing. The likelihood of such an event may be reduced by occasionally evaluating the merits of merging the responsibilities of branches of different departments, as was done in the case described below.

Expropriation confusion

A farmer was informed by the Department of Environment that his land was required for the construction of a dam project. Government policy provides that an owner of expropriated land be given an opportunity to purchase a suitable replacement property from the Crown. The complainant offered to sell his land to the government on condition that he be permitted to purchase a piece of land on which he held a grazing lease from the Department of Energy and Natural Resources.

The Department of Environment concurred with this proposal, and prices were agreed upon for both the expropriated land and the replacement land. The arrangement consisted simply of a letter from the complainant's solicitor and acceptance by ministerial order, with no formal written agreement or mention of closing dates for the transfer of properties. Environment advised the Department of Energy and Natural Resources of its decision and provided a cash payment to the complainant for his property.

Some time after this transaction had been completed, and two months after being advised of the Department of Environment's intent, the Department of Energy and Natural Resources informed the Department of Environment that the replacement land specified in the agreement could not be sold until quit claims relating to the grazing lease were received from the complainant and the partner who shared the lease with him. In the meantime the complainant moved his residence onto the land under grazing lease and began a farming operation.

Environment forwarded the request for quit claim documentation to the complainant's lawyer, and there ensued a delay of three years before the quit claims were received by Energy and Natural Resources. The latter department then forwarded a contract of sale to the complainant, who, although still interested in purchasing the land, objected that the government was asking a price agreed upon three years earlier, when land prices had been much higher. He asked Energy and Natural Resources to reappraise the land in question to determine a fair value at current market prices. The department refused, and negotiations ground to a halt. The complainant appealed to us for assistance.

In view of the absence of evidence that the complainant had been adversely affected by the government's actions, we were not prepared to support his argument that he should be offered the land at a reduced price. If anything, apart from having had the use of the cash he had received for his property, he had benefited from paying no rent for three years on the grazing lease that he had effectively transformed into a new home and farm.

Nevertheless, the handling of the negotiations by the two departments left much to be desired. One department, Environment, had agreed to sell property under the control of another department without consultation. It appeared that the resentment of officials in the Energy department at Environment's high-handed manner exacerbated an already existing carelessness of communication and lack of coordination between the two departments involved in the transaction that further contributed to the three-year delay in the completion of the sale. Their haphazard approach to a normal business transaction resulted in the complainant technically being in contravention of his grazing lease by taking up residence on it. Further, this irregularity was permitted to continue in the legal limbo created by the manner in which an agreement of sale was negotiated with the complainant, with no mention of closing dates.

We notified both departments of our concerns about the efficiency of their procedures regarding legal transactions. The replies from ministers in the departments indicated that steps

had been taken to prevent the recurrence of similar incidents. The land acquisition branch of the Department of Environment had been amalgamated with the realty division of the Department of Public Works, Supply and Services for greater efficiency, and new procedures had been incorporated that required that written agreements be properly executed for all transactions and that all trade lands be in the department's inventory. From both accounts, it appeared that cooperation and communication between the land acquisition branch and Energy's public lands division had been considerably improved.

ENERGY RESOURCES CONSERVATION BOARD

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints	0	0	0	1	0	0	1

Case summary 9

People adversely affected by government regulations often complain that they should have been notified of them. A typical bureaucratic response is that if someone wants to know the law, it is up to him to ask or to look it up. Such a reaction fails to take into account that the fundamental purpose of the public service is to actively serve the public. Every effort should be made to inform the public of regulations that are likely to affect it.

Expense claim gets short shrift

When a company applied to the Energy Resources Conservation Board to construct a gas pipeline, a public hearing was held to give affected landowners a chance to present their concerns.

Almost two years later a farmer submitted a claim to the Board for his costs in preparing for and attending the hearing. The Board rejected the claim on the strength of a statutory provision that expense claims must be submitted within thirty days of a hearing. The purpose of the provision, it said, was to enable the Board to assess the costs of the hearing and apportion responsibility for them. The Board advised him to submit his claim directly to the contractor who had installed the pipeline.

The landowner complained to us that he had not known about the time limit and that the Board should have brought it to his attention at the time of the hearing. The Board's position was that in view of the fact that the complainant had asked to be compensated for the several hours he had allegedly spent reading the relatively brief statute, he should have been aware of the statutory provision that was contained therein.

The Board explained that an effort was often made to inform interveners who were not represented by counsel of the regulations regarding expenses, but there existed no legal duty to do so. "If the legislature had intended that the Board should provide background information," it said, "the legislation would so direct." It pointed out that its staff was always prepared to give advice to anyone who asked for it.

Because the complainant was an educated person who had evidently had ample opportunity to inform himself of the time limit regarding expenses, we concluded that his claim for compensation two years after the hearing in question had little justification. However, we expressed our concern to the Board that its haphazard approach to the dissemination of information might be a disadvantage to people easily confused by statutory language and intimidated by bureaucratic red tape.

Although there was no specific legislative requirement that the Board inform citizens attending hearings of regulations directly affecting their purse, we suggested that in the interest of fair play it should make a point of doing so. In the result, the Board agreed to encourage full disclosure of ERCB regulations.

DEPARTMENT OF ENVIRONMENT

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints	3	0	1	3	0	0	7

Case summary 10

In the case described below, there was little disagreement as to what had occurred and who was responsible for it, but the question of how to remedy it brought negotiations between the complainant and the government to a halt for two years before the Ombudsman was asked to intervene. Where communication has broken down for whatever reason, the Ombudsman is ideally situated to play the part of an impartial arbiter who assists the parties to come to an amicable settlement.

Water line wreaks havoc

A farmer complained that the Department of Environment had left his land in a damaged state after building a municipal water line across it. The department had agreed to restore the land to its original condition when the initial contract had been signed, but fences had not been adequately reconstructed, disturbed topsoil had not been replaced, and thirty acres that had previously produced crops for the farmer were no longer arable.

The farmer wanted $28,000 compensation, the government drew the line at $20,000, and they were at an impasse. A major factor holding back the negotiations between the two sides was a reorganization of the levels of government involved in the dispute. Initially the farmer had been dealing with the Department of Environment's municipal utilities division and land acquisition division, but the former was transferred to the Department of Utilities and Telecommunications and the latter to the Department of Public Works, Supply and Services.

The farmer was having a devil of a time trying to keep track of who was now responsible for what, and the departments in turn were getting fed up with his insistent demands for further compensation. By the time the matter reached our office the dispute had been going on for two years, and the situation had deteriorated to the point where the Department of Public Works, Supply and Services, on the instructions of the Department of the Attorney General, had told the farmer they were closing the file on his case.

We visited the property to observe the details of the project and the aftereffects of its construction and arranged to have a meeting with the farmer and representatives of Public Works, Supply and Services and Utilities and Telecommunications. Old issues were discussed and new ones were identified and agreed upon. The farmer by this time had upped his demand for compensation from $28,000 to $150,000, but he admitted that this was simply a "negotiating position" from which he would be prepared to descend. The departments agreed jointly to review all the issues. A new settlement offer of $28,556.92 was proposed and was accepted by the complainant.

Not only was the complainant satisfied with the outcome, but there was relief on the part of the government as well, for it was saved the approximately $5,000 a day it would have cost to have the matter decided by the Land Compensation Board had no amicable resolution been reached through our intervention.

DEPARTMENT OF HOSPITALS AND MEDICAL CARE

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Alberta Mental Hospitals	15	1	0	3	0	1	20
Health Care Insurance Division	1	1	9	8	1	0	20
Other Hospitals and Medical Care	2	0	0	1	0	0	3
Total	**18**	**2**	**9**	**12**	**1**	**1**	**43**

Case summary 11

Misunderstandings resulting from poor communication are one of the primary reasons why ombudsmen are kept busy. "Put it in writing" is sound advice to anyone dealing with a government department. Telephone conversations have a habit of being forgotten or not acted on. The following case also illustrates the unfortunate tendency of government to tell people that they have made mistakes but not what they can do to set matters straight — a tendency that is greatly exaggerated when letters are written by computers.

The long arm of AHCIP protection

An Ontario student who had been studying at an Alberta institute of technology returned to her home province after completing her program. Before she left she called the Alberta Health Care Insurance Division to cancel her medical coverage and to apply for reimbursement of a premium subsidy to which she was entitled because of her reduced level of income during her student years.

Six months after taking up residence in Ontario, the woman had received notification that her subsidy application had been approved but had still received no payment; in addition she found out that she was still under AHCIP coverage. She wrote to AHCIP to inquire about the confusion and was advised (a) that her oral notification of cancellation of coverage had not been processed but would be now, and (b) that she had mistakenly made a subsidy application on a form that applied to a period after her departure from Alberta. Consequently, as she had paid no premiums for this period, no reimbursement would be made. The letter did not advise her how to go about correcting the mistake by applying for retroactive subsidies for the earlier period during which she had been a student.

In spite of a promise that her coverage would finally be cancelled, and notwithstanding a second letter entreating AHCIP to recognize that she was now an Ontario resident, she continued to receive letters assuring her that she need have no worries in the event of hospitalization because her AHCIP coverage was guaranteed. Two and a half years after moving east the woman appealed to us to help her break free from AHCIP's protection and to find out how she could receive reimbursement for her premium subsidy.

On being contacted by us, AHCIP agreed to cancel the complainant's coverage retroactively. It appeared that the problem was created in part by the fact that the complainant had told AHCIP that she had left the province without providing the precise date of her departure. As the AHCIP computers had been programmed to demand this information, her computerized records had been languishing ever since in memory bank limbo.

AHCIP also agreed to provide her the necessary form to enable her to apply for a retroactive premium subsidy for the billing years during which she had been a student in Alberta. It was apparent that the complainant's confusion about the subsidy had been generated both by her failure to comprehend AHCIP's explanation that her subsidy application had been incorrect and by AHCIP's failure to advise her how she might remedy the mistake.

Case summary 12

There are many occasions when the investigative role of the Office of the Ombudsman is minimal. Typical is the situation where it merely acts as a prod to get the government to respond in some way to requests from a citizen who feels as if he has been put on perpetual hold by the invisible "powers that be". Although some departments are habitually overworked or understaffed, it is important that priority be given to acknowledging simple inquiries rather than placing them on a backlog of claims to languish for months. Sometimes there may be excuses for delays; there is never an excuse for the absence of basic courtesy.

Like talking to a stone

A woman wrote to us to express her frustration over difficulties in communication she and Alberta Health Care were experiencing in the matter of a premium adjustment. As someone with no taxable income, she was eligible for a premium subsidy, but she was not receiving it. In addition, although her child had acquired separate coverage some time ago, the mother was still receiving family billing instead of single coverage.

The woman had sent many letters and made numerous phone calls to Alberta Health Care asking them to make the necessary adjustments to her premiums, but nothing was achieved. She got fed up with phoning because, as she put it, "all they do is play music while you're on hold for two hours", and the only written response she had received was a form letter reminding her how much she owed and suggesting that if she disagreed with the amount she provide proof that she had already paid. The letter made no mention of her repeated requests to have an adjustment made to her billing category.

When our office received her complaint, we got in touch with Alberta Health Care and described to them the woman's complaint. On receipt of our inquiry Alberta Health Care immediately transferred the woman's policy from family to single coverage and made the appropriate adjustment to her premium arrears. They agreed that she was additionally entitled to a subsidy as a non-payer of tax, but explained that the subsidy has to be applied for each year on a special form. The complainant, they said, had not taken this step, but if she were to do so now, the subsidy would be provided.

We conveyed this information to the complainant, who said that she had requested a subsidy form from Alberta Health Care but they had never sent it to her. Nevertheless, she was happy that the matter was finally being resolved after many unsuccessful attempts on her part.

DEPARTMENT OF HOUSING

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Mortgage Interest Relief	2	0	0	1	0	0	3
Mortgage and Housing Corporation	8	0	2	0	0	0	10
Other Housing	5	0	0	1	0	0	6
Total	**15**	**0**	**2**	**2**	**0**	**0**	**19**

Case summary 13

A complaint that is not supported by the Ombudsman on the grounds that a department has followed standard, acceptable procedures may nevertheless lead to a recommendation for improvement of those procedures to provide better service to the public.

When opportunity knocks

A man who had been desperately seeking a home for his family finally saw a likely prospect when he drove into a government housing project. He liked the look of the unit and its location, and he decided on the spot to make an application to rent it. He immediately called a rental agent at the Alberta Mortgage and Housing Company to ask her what he needed to do. She said he ought to make a viewing appointment before applying to rent it, but because of his working schedule the earliest time he could see it was two evenings later. They arranged to meet at the house.

The next day the rental agent rented the unit to another couple. When the man found out about this, he objected strongly. He told the rental agent and her superiors that he should have been given first choice of acceptance or refusal, and they told him that they had been following normal procedure. "Normal procedure doesn't make it right," he said in his letter of complaint to us.

The president of Alberta Mortgage and Housing said that a unit was normally held for an interested person only after payment of a damage deposit and completion of an application form. This, he said, was standard policy in the real estate industry, designed to protect a company from losing a rental when someone fails to carry out their expressed intention to rent and a second prospect shows up. Ordinarily these terms were explained to a prospective renter at the time of viewing, but in the complainant's case it was by then too late.

In light of the complainant's unhappy experience, the president agreed to alter the corporation's customary procedure. It was decided that in future, to reduce the chance of a prospective tenant missing an important opportunity, the rental policy would be explained at the time of initial inquiry rather than at the viewing appointment.

DEPARTMENT OF LABOUR

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Employment Standards Branch	5	0	1	3	0	0	9
Human Rights Commission	1	0	0	2	0	0	3
Other Labour	3	0	0	0	1	0	4
Total	**9**	**0**	**1**	**5**	**1**	**0**	**16**

Case summary 14

Fighting for minimum wage

An aerobics instructor who taught occasional one-hour classes at a fitness centre discovered that she was being underpaid. After a long period during which she received remuneration only for her class hours, she learned of a government regulation that requires three hours' wages at least at the minimum wage rate to be paid to employees who are called in to work for shorter time periods.

She complained to the Employment Standards Branch, which regulates employment practices in Alberta, and was told that her claim would be given top priority. Seven months later, when nothing appeared to have happened, she asked our office to see if anything could be done to advance the resolution of her claim.

The Deputy Minister of Labour apologized about the unreasonable delay in the settlement of our complainant's claim. He said that although the Employment Standards Branch at times had a heavy caseload, the claim in question should have warranted special

attention in view of the courage of the complainant in putting forward her case while still employed. He said that the Employment Standards Branch is inclined to be flexible about the minimum wage regulation where workers are available only for one-hour time periods. In addition, there was doubt as to whether the aerobics instructor fell within the definition of "employee". An investigation would be necessary.

The result of the investigation within the department was that the Employment Standards Branch instructed the fitness centre to comply with the minimum wage regulation and calculated the back payments owing to the complainant and other fitness instructors. The fitness centre replied with a counter offer amounting to 50 percent of the figure suggested by the Employment Standards Branch, and the branch advised the complainant to accept this offer as it was unlikely her claim would stand up in court.

The complainant signed a release form and accepted the money, but the fitness centre continued to ignore the minimum wage regulation in its subsequent payments of wages to instructors. The complainant again approached the Employment Standards Branch and was told that the branch had decided to "sit on it" as the fitness centre had applied for a special permit to bypass the regulation, and this had not been ruled on. The complainant was incensed. "I think a law should be enforced until otherwise stated," she said.

The Employment Standards Branch subsequently issued a permit to the fitness centre to allow it to pay a minimum of two hours' wages for any period of work less than two hours. A cheque was issued to the complainant to compensate her for her lost wages during the period preceding the issuance of the permit.

DEPARTMENT OF MANPOWER

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints	1	0	0	2	2	0	5

Case summary 15

When an employee's job swings in the balance, frankness on the part of supervisors whose opinions affect his career is an essential part of fair treatment. It does an injustice to an employee to praise him to his face while criticizing him behind his back.

Nice words were no favour

A contract employee of the Department of Manpower submitted his application when the department held a competition for several longer-term jobs similar to his present position. He scored well on his interview and was told by the competition supervisor that he would have been certified for a position but for a negative past employer contact.

The employee was puzzled by this turn of events. He later found out that people with much less experience had been hired. His written references were impeccable, but he remembered having difficulty with one person who had supervised him for a brief period some years previously. He suspected that she must have been the reference who was contacted and that the competition supervisor had sought no one else's opinion. He asked who had been contacted and what negative information had been provided about him, and was told this was confidential information.

He complained to us that if his suspicion was correct, the department was in breach of its regulations requiring three reference checks to be made, and he also argued that it was unfair to withhold from him information about negative opinions about his competence.

Although confidentiality provisions have been loosened in some other provinces such as Quebec, such is not the case in Alberta. A call to the Privacy Commission in Ottawa revealed that candidates for federal positions have virtually unlimited access to competition files on their applications. However, the Alberta Personnel Administration recruitment and selection manual stipulates that "it is important that the confidentiality of the process be maintained and that candidates not be given the details of comments made in confidence". The rationale is that supervisors unprotected by confidentiality provisions may hesitate to speak freely.

An interview with the competition supervisor confirmed that three reference checks had been made and that the negative comments had been made by a supervisor who had given the complainant a reference letter that was nothing but good news. The complainant's competence was unquestioned, but it was suggested that his dislike of mundane, routine tasks and tendency to question the efficiency of bureaucratic procedures left his personal suitability for the new position open to doubt.

Because the department had followed its regulations correctly in conducting the competition, we were not able to support the applicant's complaint. However, concern was expressed to the deputy minister about the importance of frankness and consistency in staff appraisals. It was pointed out that while there may exist a natural tendency for supervisors to exaggerate employees' good points in letters requested by employees, such a seeming kindness may unfairly work to the detriment of those who attach to their résumés positive appraisals that are later retracted behind the cloak of confidentiality.

DEPARTMENT OF MUNICIPAL AFFAIRS

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Assessment Appeal Board	0	0	0	2	0	0	2
Other Municipal Affairs	3	0	1	1	0	0	5
Total	**3**	**0**	**1**	**3**	**0**	**0**	**7**

Case summary 16

Tax advantage of farmland designation

A landowner was astounded to find that the municipal taxes on his 124-acre property had jumped in one year from $450 to over $6,000. He appealed to the Assessment Appeal Board, arguing that the municipality, which some years before had expanded to annex his land, had unlawfully rezoned his property. When the appeal was rejected he said he would sell the land rather than submit to what seemed such an exorbitant increase. He complained to us.

Our investigation revealed that the land had not been rezoned; it had simply been reclassified from farmland to "vacant residential". The complainant argued that it should be described as farmland since its most recent use had been of an agricultural nature, in that the tenant had kept horses and harvested hay.

Unfortunately for the complainant, the Municipal Taxation Act classifies land according to current use rather than previous use. The act defines farmland as land whereon a person derives from farming operations income sufficient to provide a livelihood. As the horse-owner/haycutter had vacated the land for presumably greener pastures, the piece of land in question forfeited its farmland status and was taxed accordingly.

PERSONNEL ADMINISTRATION OFFICE

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints	1	0	0	1	0	0	2

PUBLIC SAFETY SERVICES

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints	0	0	0	1	0	0	1

Case summary 17

On decisions of government policy, ministers of the crown are answerable directly to the legislature of Alberta and, ultimately, to the electorate. It is not within the Ombudsman's jurisdiction to question such decisions. He will, however, investigate whether departmental officials responsible for procuring for a minister the material he needs to arrive at a decision have provided him with complete and adequate information.

Carrots in the snow

The winter of 1984 was an unusually bitter one in Alberta. Heavy snows and killing frosts came early and stayed. During an exceptionally cold spell in late October, temperatures averaged from ten to twenty degrees below normal.

Many farmers suffered losses, and particularly hard hit were growers of late-harvesting crops like beets and carrots, which were frozen in the ground and impossible to save. Some vegetable farmers, ineligible for insurance under the Hail and Crop Insurance program, appealed to the minister responsible for Disaster Services (now Public Safety Services) to declare the fall weather conditions a provincial disaster and set up a compensation program to assist affected farmers.

After weighing several options that might be employed to alleviate the financial difficulties of the farmers, the government decided that a declaration of a state of disaster was not the appropriate course to take. It advised the farmers that although the early winter had been destructive, it had not been an extraordinary weather event and did not warrant establishment of a disaster assistance fund.

The government concluded that a more appropriate approach would be to set up special programs under the Department of Agriculture that would assist hard-hit farmers with their operating expenses during the next growing season. Included among the new programs was a Fresh Vegetable Production Incentive Program, which provided for payment of up to one-third of the production costs of eligible farmers during the 1985 season.

One vegetable grower who estimated his losses at over $300,000 and was unable to plant a crop in 1985 complained to us that the government had erred in not declaring the fall weather conditions a disaster. We explained to him that it was not within our jurisdiction to investigate policy decisions made by cabinet ministers. However, we investigated the process by which information had been provided to the minister by departmental officials, and determined that the minister had been provided with adequate and accurate information to enable him to produce an appropriate response.

DEPARTMENT OF PUBLIC WORKS, SUPPLY AND SERVICES

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints	2	1	0	3	1	0	7

Case summary 18

Slow to say no

A complaint was received from a landowner about unusual delay by the government in reaching a decision not to purchase his land in the Edmonton Restricted Development Area. Land prices were fluctuating wildly at the time, and the complainant maintained that his ability to make a profitable sale had been detrimentally affected by the government's slowness to act.

Between 1976 and 1981 he made a number of offers to sell the twenty-acre parcel to the Department of Environment's land assembly division, which was later transferred to the control of the Department of Public Works, Supply and Services. Although the department expressed a continuing interest in acquiring the land, each of the offers was considered to be greatly in excess of the appraised value, and no agreement was reached. In the course of the five years the appraised value shot up from $200,000 to $700,000.

In 1981 the landowner told the department he wanted to suspend negotiations for a number of months. Then in March 1982 he reconsidered and presented a further offer to sell for $1,040,000. The department told him it was still too high, but said it was prepared to consider a lower offer, stressing that it was making absolutely no commitment. A lower offer was then received with a deadline of June 1, 1982. Departmental officials forwarded the offer to the minister for his consideration.

On May 17 the Minister of Environment wrote to the Provincial Secretary, whose approval was required on disbursements from the Government Land Purchases Fund, requesting that the property be purchased for $900,000. In July the Minister of Environment wrote to the Premier, who was chairman of the Priorities Committee of Cabinet, asking for authority to purchase the land "subject to the department attempting to negotiate the price downwards." During the intervening months the landowner contacted the department on a number of occasions to express his concern about the deadline having passed and was told that his offer was still being actively considered.

The government's inability to make a hasty decision on the landowner's offer at this time stemmed from several factors. First, acceptance of the offer had to be approved both by the Provincial Secretary, who was away on holidays, and by the Priorities Committee of Cabinet. Secondly, the government was considering purchasing a number of properties in the restricted development area and wished to wait until the others were ready for review. Thirdly, the cabinet was reviewing expenditures generally as a result of the economic downturn, and considerable doubt existed about the availability of purchase funds. The landowner was informed that a definitive answer would possibly be available by September. This did not come to pass, and a further delay was necessitated by the calling of an election shortly afterwards.

By this time land values had begun to fall. In January 1983 the landowner was advised that his $900,000 offer had not been accepted because a revised appraisal placed the value of the land at $560,000. He was invited to make a further offer and declined to do so. Instead he decided to complain to us.

Our investigation revealed that the actions taken by public servants in processing the complainant's offer did not contribute to a delay in reaching the ultimate decision. The offer to sell had been received on May 17, 1982, and forwarded to the minister with a favourable recommendation within ten days. After that, the matter remained at the ministerial level until a

decision was reached eight months later, at which time it was communicated with dispatch to the complainant.

As no fault was to be found in the actions of the public servants involved in the negotiations, the landowner's complaint to the Ombudsman was not supported.

DEPARTMENT OF RECREATION AND PARKS

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints	1	0	1	0	0	0	2

Case summary 19

There sometimes appears a tendency among public servants to view "administrative error" in a similar manner to insurance companies' perceptions of acts of God: inevitable from time to time and totally without remedy. But citizens who act in good faith on the basis of government misinformation, to their detriment, have just as much right to expect fair treatment as they would in their dealings with private companies — even when correcting a mistake means waiving "government regulations".

Half a dollar on principle

Three men who agreed to work for $5.50 an hour in a provincial park were surprised to find that their first paycheques were based on a rate of $5.00. Their time sheets had been altered to show the lower rate after they had been signed by the employees. Assuming a simple mistake had been made, the men brought the discrepancy to the attention of their supervisor, who said that as it was not his error there was little he could do.

The employees sought assistance from our office and were advised to seek clarification from the personnel office for Alberta Recreation and Parks. On doing so, they were told that the correct rate for their position was $5.00, that someone had erred in offering employment at the higher rate, and that as it was an administrative error, nothing could be done about it.

What was seen as a simple administrative error from the government's point of view was in the employees' eyes a breach of contract. As one of them pointed out in his letter of complaint, he might not have accepted the job had it been offered at a lower rate of pay.

We related the men's concern to the deputy minister of the department, who advised us that while the department lacked the authority to alter the established provincial wage rate for the program, he agreed that the workers should be compensated for losses resulting from the department's error. Consequently they were reimbursed for the extra fifty cents an hour originally offered for all the hours worked until two weeks after they had been informed of the error.

DEPARTMENT OF SOCIAL SERVICES AND COMMUNITY HEALTH

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Alcoholism and Drug Abuse Commission	0	0	0	1	0	0	1
Other Social Services and Community Health	29	7	4	11	9	1	61
Total	**29**	**7**	**4**	**12**	**9**	**1**	**62**

Case summary 20

Reduction in widow's pension

A man complained to us on behalf of a friend whose widow's pension had been reduced by over 80 percent to less than $100 a month. The Department of Social Services and Community Health had taken this step because her tax return for the previous year showed a significant income. She maintained that her pension should be calculated based on current income rather than on income previously earned. The department informed her that a request had been made for a legislative amendment to bring such a policy into effect, but our informal inquiries revealed that the request had been turned down by the responsible legislative committee.

The complainant had told the department that she had not actually received the money declared on her tax return, and had produced a letter from an accountant that explained that the income had merely been attributed to her to soften the taxable position of her husband's estate. A supervisor of the Widows' Pension Program had told her that consideration would not be given to exempting the earnings shown on her tax return, but upon our intervention the director of the program volunteered to review the case. On the basis that the income in question had gone to the estate rather than directly to the complainant, he decided to increase her pension to approximately half of the amount she had originally been receiving and to provide her with a retroactive cheque for $1,959.

We sent a letter of appreciation to the widow's friend who had helped her with her difficulty and had brought the matter to our attention.

Case summary 21

No improvement, no pension either

A woman who received a pension from the Assured Income for the Severely Handicapped program was surprised to receive a letter from the AISH administrator telling her that her benefits were being discontinued as a result of a recommendation from the medical review committee. "While you continue to have a handicapping condition," the letter said, "according to medical opinion you appear to have substantially improved in the past two years, and would likely improve further with other rehabilitative measures." This was news to the woman, who had suffered a back injury as a child that had rendered her virtually unemployable. She appealed the decision, pointing out that her medical reports described her condition as permanent with a possibility of worsening, but the appeal committee upheld the administrator's decision without providing a reason.

The woman was adamant that her pension was being unjustly removed. She asked her social worker what to do. He told her the appeal committee's decision was pretty well final, and that the only place left for her to turn was the Ombudsman. "I would very much appreciate it if you would examine this case so that I can get my pension again," she said in her letter of complaint, "or at least try to understand why Social Services thinks my condition is improved."

Her complaint was referred for comment to the director of the department's Appeal and Advisory Secretariat, who replied that in his opinion the appeal had been properly processed.

Our investigation showed that her doctor's reports, two years apart, were virtually identical. Both indicated that she suffered from degenerative arthritis and disc disease that was likely to remain at the present level or get worse. The only difference was that in the earlier report the doctor had ticked off the box that said the woman was medically employable for sheltered work; in the later one he had marked the box that said she might do part-time work of a sedentary nature. The doctor had suggested that the woman lose some weight in an effort to ease her symptoms, but she had been unable to do so.

As the doctor had not provided any details of his prognosis, we suggested to the complainant that she ask him to elaborate on his opinion that she might be capable of part-time work. He wrote that she might be capable

of desk work, and added that her lack of education ought to be considered when her employability was being evaluated. The complainant told us that she had no experience in desk-work; she had only engaged in "hard work".

The complainant's social worker, at our suggestion, forwarded the doctor's opinion to the complainant's regional office of Social Services, pointing out that the doctor's reports for three years on the woman's condition were virtually identical and noting that "because he forgot which little boxes he had previously marked does not constitute an opinion of substantial improvement". The regional manager replied that the degree of education could not be considered a relevant factor and ruled that the complainant still did not meet the AISH criteria.

Again the complainant appealed to the Citizens' Appeal and Advisory Committee, reiterating that there had been no improvement in her condition, and this time the committee upheld her appeal. Because the complainant had achieved what she set out to do, our investigation of her complaint was discontinued.

DEPARTMENT OF THE SOLICITOR GENERAL

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Correctional Services Division	97	29	17	38	12	1	194
Alberta Liquor Control Board	0	0	0	0	1	0	1
Motor Vehicles Division	10	1	3	1	1	0	16
Other Solicitor General	4	1	0	4	0	0	9
Total	**111**	**31**	**20**	**43**	**14**	**1**	**220**

Case summary 22

The bad-luck car

A woman who was in the process of buying her mother's car ran into problems when her ex-husband borrowed the car without her permission and drove it into a parked pickup truck. The car was totalled, the pickup was damaged, and the mother told her insurance company not to pay the claim. A $5,000 judgement was laid jointly against the daughter and her ex-husband, but both daughter and ex-husband were broke.

The icing on the cake for the daughter was the suspension of her licence indefinitely because of her inability to pay the judgement. A mother of three, she decided that the only thing she could do was take a job to earn the money to pay off the amount of the judgement so she could get her licence back. Unfortunately she had to drive to get to work, and the police stopped her. She was subsequently given a six-month suspension for driving while her licence was suspended.

Caught in a classic Catch-22, the woman approached our office as a last resort. An official at the Motor Vehicles Division explained that the woman had been told that the judgement suspension might be lifted if she would make an arrangement for payment of the $5,000, but this had not been done. Nevertheless, the department agreed that "as it is not this department's intent to restrict an individual's driving privileges in circumstances where it is not warranted for the purposes of safety or for reasons of an equitable nature, and as it appears [the complainant] is unable to satisfy the judgement", it would be appropriate to lift the suspension imposed pursuant to the judgement and to reinstate the complainant's licence once the six-month suspension was up.

At the end of the six-month period the complainant went to renew her licence and was told that the computer said it was still under suspension. On behalf of the complainant, we contacted an official in the Motor Vehicles Division who was able to convince the computer to reconsider and give the woman her licence back.

Case summary 23

Right to a second opinion

One of the functions of an Ombudsman is to identify unfair or deficient regulations and procedures. A complaint from an inmate about prison regulations touched on an issue of central importance to those who are incarcerated: to what degree does a correctional institution have the authority to remove from a prisoner rights that other citizens enjoy?

An inmate in a correctional institution was diagnosed by the prison psychiatrist as being slightly manic and suffering from grandiose delusions. There was some concern that his condition might lead to violent outbursts with the possibility of harm to himself or to the staff and prison population. As a result, the psychiatrist prescribed a tranquillizing drug for him.

When the inmate protested, he was told he had the choice of taking the medication orally or being held down by guards and having it injected by force. His request to have a second opinion provided by his family doctor was refused. Instead the prison doctor obtained a concurring opinion from a doctor in the forensics division of a general hospital. The inmate agreed to take the medication voluntarily rather than have it administered by force, and complained to us that he had been deprived of his right of consent.

Although there is no doubt that corrections officials have an obligation to constrain an inmate when the security of an institution is at risk, we expressed our concern about inmates being subjected to medical treatment without their consent simply to alleviate a management problem. After conducting an internal review, the department was prepared to agree that no inmate should be treated without consent in a correctional facility, irrespective of whether or not he constitutes a management problem, and it revised its procedures accordingly.

Its new policy provides that forced treatment will occur only in "urgent, life-threatening or emergency situations" or "when an inmate appears mentally incompetent and unable to appreciate the seriousness of the situation to his/her life", and in those cases the inmate will be transferred to a mental health facility or general hospital rather than being treated in the institution. No treatment will be forced upon an inmate who appears mentally competent and withholds consent to treatment for a non-serious condition.

In addition, the policy regarding requests for examination by personal physicians was amended to provide that in cases where an inmate refuses treatment without his doctor's approval the correctional services division will pay the physician's costs for the purpose of obtaining the inmate's consent.

Case summary 24

The vast majority of inmates' complaints are found to be unsubstantiated, but because they are especially vulnerable to unfair practices by those responsible for their care, an Ombudsman must be particularly watchful that the principles of natural justice are closely followed in correctional centres.

Solid conviction, doubtful procedures

Following a disturbance and the discovery of contraband pills at a correctional centre, two inmates at a correction institute were escorted to the health-care unit, where a medical examination was made that led to their conviction by a disciplinary board for being under the influence of an unknown substance. The sentence was fourteen days' segregation and loss of thirty days' remission.

The inmates complained to us that their conviction had been based on readings of their pulse and blood pressures. They argued that such variable factors provided insufficient evidence.

Our investigation revealed that in fact eight vital indicators (such as coordination and pupil dilation) had been monitored and registered on the standard "Suspect Under the Influence" checklist such as to provide sufficient proof for conviction. We suggested to the department, however, that as pulse and blood pressure readings taken in isolation could be misleading, those taken at the time of admission to the institution should be available for comparison.

During the course of our investigation we learned that the deputy director of the institution, who had been directly involved in the initial removal of the complainants from their cells, also sat on the disciplinary hearing panel. Thus investigator and witness was also in essence judge and jury. Our concern about such an obvious contravention of natural justice had been brought to the attention of the correctional services division in previous instances by this office.

By the time our investigation was concluded one of the inmates had been released and the other had been removed from segregation, so there was little to be gained from recommending that the conviction be overturned because of the serious nature of the irregularity that had occurred. We did, however, express our concern to the department that such a practice not be repeated.

In responding to our findings, the department agreed that members of staff involved in filing, reviewing or approving an initial charge must not sit on a disciplinary board dealing with the charge. Indeed, existing departmental policy specifically prohibited such a practice. The department provided its assurance that steps would be taken to attempt to ensure that such situations would not recur barring a significant shortage of available board members and circumstances requiring an immediate decision by a disciplinary board.

In addition, the department agreed to revise its "Suspect Under the Influence" checklist to incorporate a comparison of previously known blood pressure and pulse rates taken at the time of admission.

Case summary 25

The disappearing cards

An inmate who was summoned to court was told by correctional officers to leave his money and personal effects in his cell as he would be returned to it following his court appearance. Instead, he was transferred directly from the court to another institution. Three weeks later his money was returned to him, but he was told that his personal effects, including playing cards, shampoos, tobacco, letters and photographs, were nowhere to be found. He complained to the Ombudsman.

The department informed us that what were thought to be the complainant's personal effects had been transferred to the second institution, but as no list had been made of the contents there was no way of knowing if the items were in fact the complainant's. The situation was complicated by the fact that the complainant was transferred among six different institutions during the weeks that followed.

The complainant was offered the choice of a cash settlement or replacement of the missing items as far as was possible from the prison canteen, and he agreed to the latter. In order to minimize the possibility of a recurrence of such incidents, the correctional services division instituted a new procedure that required a detailed list of any property forwarded between institutions to be compiled.

DEPARTMENT OF TOURISM AND SMALL BUSINESS

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Small Business and Farm							
Interest Shielding Branch	1	0	0	0	0	0	1
Other Tourism and Small Business	0	0	0	1	0	0	1
Total	**1**	**0**	**0**	**1**	**0**	**0**	**2**

DEPARTMENT OF TRANSPORTATION

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints	4	0	3	1	0	0	8

Case summary 26

Although emphasis is usually placed on the Ombudsman's role as a citizen's advocate, his function is often simply that of a mediator to facilitate communication between a complainant and the government when negotiations between the two are made difficult because of intransigence or distrust.

Spray truck leaves bee-keepers fuming

A bee-keeping couple lived beside the curve of a highway that was designated for realignment by the Department of Transportation. After the earthmovers came and went, the bee-keepers were upset to find that the machines had left ruts on their pasture, obliterated a number of caragana bushes and dumped old asphalt on land that was near their water supply. When the graders returned to landscape the area some months later, fence markings were destroyed and topsoil was removed from land that the bee-keepers had arranged to lease from the department for the purpose of wintering their bees. Then came the harrows and seeding equipment, further battering the land and caraganas.

The bee-keepers calculated that over $30,000 damage had been done and wrote a demand for compensation to the contractor that had done the job for the Department of Transportation. They also complained to the department itself, which admitted that its equipment had trespassed onto the couple's land and agreed to send a work crew in to repair the damage.

When a spray truck arrived on the scene, the bee-keepers assumed the driver was there to spray chemicals on the weeds that had grown on the land that the department had unsuccessfully attempted to seed with grass. The husband bee-keeper, fearing that the mere presence of fumes from the truck might endanger the well-being of his bees, ordered the driver to remove his vehicle. "Sez who?" responded the spray-truck driver. This remark was followed shortly thereafter by an altercation of a physical nature that resulted in the bee-keeper being convicted of assault. The judge, noting that the bee-keeper was larger than his opponent, said that the accused should have engaged the driver in a lengthier conversation before seeking a more dramatic resolution.

After the spray-truck incident, relations between the bee-keepers and the Department of Transportation became cool, and negotiations proceeded with difficulty. A new claim to the department for financial compensation was rejected out of hand on the grounds that there

was no insurance to cover it. The couple appealed for assistance to the Farmers' Advocate, who investigated their complaint but was unable to render assistance because his jurisdiction was limited to complaints against the Department of Agriculture. They then appealed to us for help regarding both the assault conviction and the alleged damage to their land.

One of our investigators went to inspect the damage to the complainants' land in the company of the regional director of Alberta Transportation. It was apparent to the investigator that negotiations between the complainants and the department remained at an impasse largely because their claim for compensation was unrealistically high, given the extent of the damage. At his suggestion, the complainants agreed to consider a more realistic figure, and they indicated they would be satisfied with about $1,500 instead of $30,000.

Some time after the investigator returned to Edmonton he learned that the Department of Transportation property manager continued to be unable to negotiate successfully with the complainants. The investigator made a second visit to the property to bring the parties together, and at this meeting the department official proposed a $2,000 cash settlement in addition to construction of a fence by the department. This arrangement was accepted on the spot by the complainants and a claim release form was signed.

Case summary 27

When damage is caused to property by private contractors performing government jobs in accordance with specifications provided by a government department, it is this office's position that the government should attempt to negotiate a settlement with the affected citizen who makes a claim rather than obliging him to claim against the contractor and commit himself to expensive legal proceedings.

No fatted calves here

A farmer became concerned when his beef cattle began losing weight. He called in the vet, who said the cows were suffering stress as a result of being exposed to the dust and noise created by gravel trucks passing the feedlot. The gravel trucks were hauling gravel on a contract for the Department of Transportation along the road past the farm.

The farmer had asked the Department of Transportation either to change the route of the gravel haul or else to oil the road, but the request was ignored until four days before the end of the haul, when some oil was laid down. He calculated his loss at $18,000 and submitted a claim to the department. The department told him it was the contractor's responsibility to provide compensation, as it was required by the contract to have insurance. The contractor told him it was the Department of Transportation's responsibility to provide compensation, as he had been operating according to the instructions given by the department. The farmer went back to the department, which then referred his claim to the Risk Management and Insurance Branch of the Treasury department, which agreed with Transportation that his problem was no responsibility of the government.

Next the farmer approached the Farmers' Advocate, who is appointed by the Minister of Agriculture to act as a go-between in disputes involving farmers. The Farmers' Advocate studied his claim and, having concluded that the actual loss was slightly under $5,000, took up his case with Transportation and Risk Management but was unable to move them from their position. The farmer then complained to our office.

It has long been the position of the Ombudsman's office that in cases where damage is done to private property during the performance of a government-ordered contract, the government has a responsibility to resolve the claim of an adversely affected citizen. The claims manager for Risk Management told us that current policy did not allow his branch to become involved in such claims, but he was prepared to propose a change in policy to enable the settlement of claims arising from negligent actions committed by contractors working for the government where immediate action is required to assist individuals who have no other recourse than to the legal system. The Deputy Minister of Transportation agreed with us that his department should take some

responsibility for the complainant's loss, and indicated that the department would be receptive to a recommendation by our office that an ex gratia payment be made.

Our recommendation that the department compensate the farmer in the amount of $5,000 was duly acceded to. However, the Risk Management and Insurance division has not altered its policy to date; instead it advises all claimants in such circumstances to present their claims to the contractor's insurance company.

ALBERTA TREASURY

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Treasury Branches	1	0	0	1	2	0	4
Public Service Pension Administration	0	0	0	0	1	0	1
Other Treasury	0	1	1	3	0	0	5
Total	**1**	**1**	**1**	**4**	**3**	**0**	**10**

Case summary 28

Many complaints to the Ombudsman stem from the frustration that arises when a complainant gets different stories from different public servants. In such instances the Office of the Ombudsman may act as a simple shortcut to clearing up confusion that exists because of a communication problem.

Pension arithmetic

A sixteen-year employee of the provincial government who left the public service to take employment elsewhere asked for an estimate of her pensionable income. The government pension authority calculated her average annual earnings allowed for pensionable service, based on the last five years of her employment, and she was surprised that the figure they gave her was approximately $10,000 less than the amount she had arrived at herself.

It became apparent to her that the difference arose from the fact that the fees she had earned as a court reporter in addition to her salary had not been taken into account. She knew there must be a mistake because when she had worked for the Department of the Attorney General an agreement had been reached that court reporters would be allowed to pay pension contributions based on 50 percent of tax-declared fees.

After several unsuccessful attempts to have the matter clarified, she decided to seek our assistance. "I have been given different information every step of the way," she explained. "I am utterly confused, so much so that every statement I get is viewed with suspicion." She provided our office with all the relevant documentation she had, and an investigation was undertaken.

Her complaint was quickly resolved when the Payroll and Pensions branch advised us that the complainant's calculations were correct, and her pension benefit figure was revised accordingly.

DEPARTMENT OF UTILITIES AND TELECOMMUNICATIONS

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Alberta Government Telephones	2	0	2	6	0	0	10
Other Utilities and Telecommunications	0	0	0	1	0	0	1
Total	**2**	**0**	**2**	**7**	**0**	**0**	**11**

Case summary 29

The following case illustrates a typical example of a situation where the law and natural justice come into conflict. It is the function of an ombudsman to attempt to have natural justice carried out even when the law would likely provide no recourse to a complainant.

Fingers did the walking, came up empty-handed

An eavestroughing and chimney-sweeping company that relied on its ad in the yellow pages to bring in customers rapidly began to lose business when Alberta Government Telephones inadvertently neglected to print its ad one year. The company began advertising elsewhere, but to little effect, as people who wanted their chimneys cleaned were inclined to pick a company out of the phone book.

AGT told the owner it was protected from liability for its mistakes, as publicly announced on the disclaimer printed on the first page of every issue of the yellow pages. Nevertheless, the company offered a settlement of approximately $500, representing the cost of one year's advertising by the chimney-sweeping company in the yellow pages. The owner of the business pointed out that this was nothing compared to the amount she had had to expend in radio and newspaper advertising to attempt to make up her losses. She suggested that $4,500 would be a fairer approximation of her supplementary advertising expenses. AGT said it was not prepared to increase its offer.

Friends advised the woman that it would be fruitless to sue the phone company. She appealed to her MLA, but he was unable to persuade AGT to compromise. As a last resort, she decided to take her case to the Ombudsman. "The only reason they can get away with this is that they have no competition," she complained. "As a small business with a lot of competition we'd be long gone if we didn't make good our mistakes."

AGT informed us that it was exempted from responsibility by its General Tariff Regulation, which provides that "no liability for damages arising from error in or omissions of directory listings shall attach to AGT". Consequently, it argued, it had no obligation to pay the company anything, and the $500 had been offered purely as a gesture of good will. It apologized for the error and said every effort would be made to see that such mistakes did not recur.

A representative of a major newspaper told us that because of the risk of costly lawsuits it is the common practice of publishers not to accept responsibility for human error in the publication of advertisements.

After the complainant had provided us with receipts proving that her advertising costs for the year were over $4,000, AGT said it was prepared to reconsider its position and agreed to increase its offer to $1,000. The complainant expressed dissatisfaction with the offer, but as AGT stood firmly by its position that it had no legal obligation to compensate her at all, she reluctantly decided to accept it and thanked us for our intervention on her behalf.

DEPARTMENT OF WORKERS' HEALTH, SAFETY AND COMPENSATION

	Declined	*Resolved Informally*	*Supported*	*Not Supported*	*Discontinued*	*Unresolved*	*Total*
Disposition of complaints							
Workers' Compensation Board	47	2	7	75	7	1	139
Other Workers' Health, Safety and Compensation	0	0	0	0	0	0	0
Total	**47**	**2**	**7**	**75**	**7**	**1**	**139**

Case summary 30

Footing the bill for sore feet

The complainant was hired by the Department of the Solicitor General to work at a correctional centre in a job that required a considerable amount of walking. It was noted at the time of her hiring that she suffered from a disease that affected one of her legs, but medical advice suggested it would not interfere with her ability to perform the job. However, some months after she began working, she developed pain in her foot that eventually led her to submit her resignation and to receive surgical treatment.

She applied for long-term compensation, claiming that her disability had arisen because she was required to wear a type of footwear that aggravated her ailment. She said she had complained of the pain to her superiors and that her request for permission to wear a more comfortable shoe had been called frivolous and had been turned down.

The Claims Services Review Committee of the Workers' Compensation Board rejected her claim on the basis of medical reports stating that although the wearing of unfamiliar footwear and extensive walking on cement floors could have caused pain in her flat feet, there was no evidence that the surgery she required resulted from the conditions of her job rather than from her pre-exisiting disease. Moreover, the Solicitor General's department denied that there was any evidence that the woman had asked to be allowed to wear special shoes.

The complainant appealed the decision to the members of the Workers' Compensation Board, employing a variety of arguments to persuade them that her job had aggravated her earlier condition. The Board agreed that there was a reasonable doubt about the cause and decided to accept a degree of responsibility for her condition and to forward $2,000 to her as an advance payment. It held back confirmation of long-term compensation in the absence of detailed medical information.

When the Board informed the Department of the Solicitor General of its decision, the department filed an objection. The Board heard additional evidence from the department that suggested it would have been easy for the complainant to have acquired more appropriate footwear while she was working at the correctional institute and that she had not drawn a connection between her disability and her job until long after she had resigned her position. On the basis of this evidence the Board was persuaded to reverse its earlier decision and demand repayment of the $2,000 from the complainant.

When the complainant approached our office, she was insistent that the department's claims were incorrect on both counts and said that in any case she was broke and did not have the funds to pay back. She further objected that the WCB, in reviewing its original decision in her favour, had accepted evidence from her employer but had given her no opportunity to respond. Her husband had written to the WCB at this time and had received no answer for two months. The Board, while apologetic for its delay in replying, explained that the husband's letter contained only statements and conjectures and did not indicate a response to be necessary. However, the Board did agree that it should

have sought evidence from the Solicitor General's department prior to its original decision, and it said it would ensure that such a practice was followed in future.

There was nothing to indicate to us that the Workers' Compensation Board had erred in the manner in which it overturned its own decision after receiving new evidence. Nevertheless, it appeared to us that the Board had contributed to the complainant's financial difficulties by making an award before it was in receipt of submissions from all the parties concerned. Under the circumstances it seemed unfair for it to seek reimbursement of the money. Our recommendation to that effect was submitted to the chairman of the Workers' Compensation Board and implemented by him.

Case summary 31

Before the Workers' Compensation Board will provide compensation to a claimant, it must be convinced by medical evidence not only that the claimant suffers from the injury for which he or she claims compensation but also that the condition is in all probability a direct result of the circumstances of employment. The responsibility for obtaining and submitting such medical information lies with the worker and his or her doctor. The Office of the Ombudsman frequently encourages complainants to attempt to obtain further evidence, as the WCB will consider new evidence even after a claimant has been unsupported by the Ombudsman, and in such circumstances may be persuaded to reverse its earlier denial of a compensation claim, as illustrated by the following summary.

A noisy and hazardous profession

A long-time welder who had left his job complained to us about the Workers' Compensation Board's refusal to compensate him for damaged sight and hearing which, he said, were a result of "extremely noisy and hazardous conditions" and were so severe as to prevent him from pursuing his trade any longer.

We were unable to look into his complaint about the refusal of his hearing loss claim as he had not yet fully appealed the WCB decision through the Claims Services Review Committee and members of the Board, but as he had done so with respect to his vision-loss claim, we opened an investigation into that part of his complaint.

The WCB had been provided with opinions about the complainant's condition from seven MDs, including three specialists in neurology and opthalmology. While there was general agreement that the man was essentially two-thirds blind, no reason for the origin of the condition had been clearly established. The specialists had recommended that the man undergo a CAT Scan as part of a further attempt to establish the cause of his impairment, but he was concerned about the possible side effects associated with such a procedure and declined to have it done. In the absence of conclusive evidence about the origin of the man's near-blindness, the WCB denied his claim for compensation, and that decision was upheld by this office.

Once the welder had exhausted his avenues of appeal concerning his hearing-loss claim, we began to investigate that aspect of his complaint as well. The result of the WCB's efforts to obtain information from his former employees combined with evidence drawn from medical reports led the Board to conclude that there was a cause/effect relationship between his working environment and his partial deafness. It did not agree that his deafness was severe enough to prevent him from returning to work with appropriate hearing protection, but it offered to provide assistance with the cost of hearing aids in addition to providing vocational rehabilitation benefits should he choose to look for alternative employment.

The welder thought he should receive total disability benefits and a permanent pension, and argued that the WCB's commitment to pay for his hearing-aids was proof of his entitlement to further compensation benefits. He told us that a hearing specialist had advised him not to return to work as a welder, but our investigator's interview with the specialist revealed a different story: he said that although he would be in favour of the complainant removing himself from a noisy environment and retraining for other employment, he considered that such an environment would not be hazardous provided sufficient hearing protection

was worn. This information, combined with our examination of the results of a hearing assessment that established that the degree of the man's hearing-loss was less than that required for pension eligibility, led us to support the WCB's decision.

After our investigation was concluded, both aspects of the man's complaint being unsupported, the WCB received from him further medical evidence that enabled it to conclude that his partial blindness was a direct result of exposure to chemicals during his work as a welder, and full compensation benefits for the period of disability were then granted, together with a permanent partial disability award and a referral to the Vocational Rehabilitation Department to enable him to return to suitable employment in another field.

Case summary 32

Pregnancy complicates convalescence

A nurse who suffered a shoulder injury required an unusually long convalescence not only because surgery was necessary but also because she was pregnant at the time. The Workers' Compensation Board awarded her a total temporary disability payment until she was considered fit to resume work, after which time she was to receive a 5 percent permanent disability award.

The subject of her dispute with the Board was the time at which she became fit to resume work. The WCB asked a board of independent medical specialists what the normal period of convalescence was following a shoulder injury of the type suffered by the nurse and determined its award to the nurse on the basis of their response. Our investigation of the nurse's complaint to us revealed that the Board had apparently ignored the report of a specialist who had examined the nurse and concluded that she was not yet fit for employment and should instead be undergoing physiotherapy. On being asked for an explanation, the Board reconsidered its position and reversed its earlier decision, as a result of which the nurse's temporary total disability payments were extended for a further four months.

EXCERPTS FROM THE OMBUDSMAN ACT

The excerpts that follow describe the functions and duties of the Ombudsman, the types of complaints he will investigate and those he will not, and the essence of the procedure that takes place once the Ombudsman has accepted a complaint for investigation.

Functions and duties

11(1) It is the function and duty of the Ombudsman to investigate any decision or recommendation made, including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any department or agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment.

(2) The Ombudsman may make an investigation either on a complaint made to him by any person or of his own motion, and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission as mentioned in subsection (1).

(3) The powers and duties conferred on the Ombudsman by this Act may be exercised and performed notwithstanding any provision in any Act to the effect

(a) that any decision, recommendation, act or omission mentioned in subsection (1) is final.

(b) that no appeal lies in respect thereof, or

(c) that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.

Jurisdiction restricted

12(1) Nothing in this Act authorizes the Ombudsman to investigate

(a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal consituted by or under any Act until after that right of appeal or objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired, or

(b) any decision, recommendation, act or omission of any person acting as a solicitor for the Crown or acting as counsel for the Crown in relation to any proceedings.

(2) If any question arises as to whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Court of Queen's Bench for a declaratory order determining the question.

Refusal to investigate

14(1) If in the course of the investigation of any complaint it appears to the Ombudsman

(a) that under the law or existing administrative practice there is an adequate remedy, other than the right to petition the Legislature, for the complainant, whether or not he has availed himself of it, or

(b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

he may in his discretion refuse to investigate the matter further.

(2) The Ombudsman may, in his discretion, refuse to investigate or cease to investigate any complaint

(a) if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Ombudsman, or

(b) if in his opinion,

(i) the subject matter of the complaint is trivial,

(ii) the complaint is frivolous or vexatious or is not made in good faith, or

(iii) the complainant has not a sufficient personal interest in the subject matter of the complaint.

Conduct at investigation

16(1) Every investigation by the Ombudsman under this Act shall be conducted in private.

(2) The Ombudsman may hear or obtain information from any persons he thinks fit and he may make inquiries he thinks fit.

Evidence at investigation

17(1) Subject to this section and section 18, the Ombudsman may require any person who, in his opinion, is able to give any information relating to any matter being investigated by him

(a) to furnish the information to him, and

(b) to produce any document, paper or thing that in his opinion relates to the matter being investigated and that may be in the possession or under the control of that person,

whether or not that person is an officer, employee or member of a department or agency and whether or not the document, paper or thing is in the custody or under the control of a department or agency.

Procedure after investigation

20(1) This section applies when, after making an investigation under this Act, the Ombudsman is of the opinion that the decision, recommendation, act or omission that was the subject matter of the investigation

(a) appears to have been contrary to law,

(b) was unreasonable, unjust, oppressive or improperly disciminatory or was in accordance with a rule of law, a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory,

(c) was based wholly or partly on a mistake of law or fact, or

(d) was wrong.

(2) This section also applies when the Ombudsman is of the opinion

(a) that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised

(i) for an improper purpose,

(ii) on irrelevant grounds, or

(iii) on the taking into account of irrelevant considerations,

or

(b) that, in the case of a decision made in the exercise of a discretionary power, reasons should have been given for the decision.

(3) If, when this section applies, the Ombudsman is of the opinion

(a) that the matter should be referred to the appropriate authority for further consideration,

(b) that the omission should be rectified,

(c) that the decision should be cancelled or varied,

(d) that any practice on which the decision, recommendation, act or omission was based should be altered,

(e) that any law on which the decision, recommendation, act or omission was based should be reconsidered,

(f) that reasons should have been given for the decision, or

(g) that any other steps should be taken,

the Ombudsman shall report his opinion and his reasons for it to the appropriate Minister and to the department or agency concerned, and may make any recommendations he thinks fit and in that case he may request the department or agency to notify him within a specified time of the steps, if any, that it proposes to take to give effect to his recommendations.

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion after considering the comments, if any, made by or on behalf of the department or agency affected, may send a copy of the report and recommendations to the Lieutenant Governor in Council and may thereafter make any report to the Legislature on the matter that he thinks fit.

(5) The Ombudsman shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the department or agency concerned.